



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 12

RIN 2900-AO41

Designee for Patient Personal Property

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation that governs a competent veteran's designation of a person to receive the veteran's funds and personal effects in the event that such veteran was to die while in a VA field facility. We are eliminating reference to an obsolete VA form, clarifying the role of a VA fiduciary for an incompetent veteran-patient, as well as restructuring the current regulation for ease of readability.

DATES: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 382-2508.

(This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register at 78 FR 63139 (October 23, 2013), VA proposed to amend its regulation concerning the disposition of a veteran's funds and effects. We proposed several changes to 38 U.S.C. part 12. We proposed that, if a competent veteran who is receiving VA medical care dies in a VA field facility, any funds and personal effects belonging to the veteran must be turned over to the person who had been designated by the veteran upon admission to such VA field facility. VA requests and encourages a competent veteran to designate an individual and provide the facility with the individual's information in order to facilitate the process of disposition of the veteran's funds and personal effects in the event of his or her death, and to help alleviate some of the burden on the deceased veteran's survivors. VA currently requests a veteran to name a designee during the registration process when VA admits a veteran for care at a VA field facility and the designee information is recorded by VA personnel directly into the veteran's medical record. However, having a VA employee enter the designee into the veteran's medical record without having a signed written designation by the veteran increases the risk for litigation against VA by the veteran's survivors. In order to reduce the risk of litigation, we proposed to create a new VA form. On said form, the veteran will designate an individual to receive the veteran's funds and effects in the event that such veteran was to die while receiving VA medical care. We also proposed to allow designation of certain family members who could not be designees under the regulation before this amendment, but continued to disallow as a possible designee a VA employee who is not a member of the veteran's family to avoid any potential for

impropriety or the appearance thereof. Finally, we proposed certain revisions to improve readability and otherwise updated the regulatory text.

We provided a 60-day comment period, which ended on December 23, 2013. We did not receive any comments on the proposed rule. Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with no changes.

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule imposes the following new information collection requirements. The information required in § 12.1 allows the veteran, upon admission to a VA field facility, to designate a person to receive the veteran's funds or effects in the event that the veteran dies while admitted to such VA field facility. The information required in § 12.1 would also allow the veteran to change or revoke such designee. If the veteran dies in a VA field facility, any funds or personal effects belonging to the veteran must be turned over to a person designated by the veteran. VA requests and encourages a veteran to name a person as a designee in order to facilitate the process of disposition of the veteran's funds and effects. VA also allows the veteran the opportunity to change or revoke such designee at any time. The information obtained through this collection eliminates some of the burden on the deceased veteran's survivors in the event of the veteran's death in a VA field facility. As required by 44 U.S.C. 3507(d), VA submitted this information collection to OMB for its review, and the information collection is pending OMB approval. Notice of OMB approval for this information collection will be published in a future Federal Register document. Until VA receives approval from OMB for the information collection, VA will not collect information associated with this rulemaking. The public is not required to respond to the information collection associated with this rulemaking until OMB approves the information collection.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will directly affect only

individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by OMB unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 Through Fiscal Year to Date.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.019, Veterans Rehabilitation—Alcohol and Drug Dependence.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on November 4, 2014, for publication.

### List of Subjects in 38 CFR Part 12

Estates, Veterans.

Dated: November 10, 2014

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Janet J. Coleman,  
Chief, Regulations Development, Tracking, and Control,  
Office of Regulation Policy & Management,  
Office of the General Counsel,  
U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 12 as follows:

## PART 12 – DISPOSITION OF VETERAN’S PERSONAL FUNDS AND EFFECTS

1. The authority citation for part 12 is revised to read as follows:

AUTHORITY: 38 U.S.C. 501, 8501–8528.

### § 12.0 [Amended]

2. Amend § 12.0 paragraph (b) by removing the phrase “funds derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds derived from VA benefits”.

3. Revise § 12.1 to read as follows:

### § 12.1 Designee cases; competent veterans.

(a) Designees—general. (1) Upon admission to a VA field facility, VA will request and encourage a competent veteran to designate in writing, on the relevant VA form, an individual to whom VA will deliver the veteran’s funds and effects in the event of the veteran’s death in such VA field facility. The individual named by the veteran is referred to in this part as the designee.

(2) The veteran may change or revoke a designation in writing, on the relevant VA form, at any time.

(3) If the veteran does not name a designee or if a designee is unable or unwilling to accept delivery of funds or effects, § 12.5 Nondesignee cases, applies.



(4) The designee may not be a VA employee unless such employee is a member of the veteran's family. For purposes of this section, a family member includes the spouse, parent, child, step family member, extended family member or an individual who lives with the veteran but is not a member of the veteran's family.

(5) To be effective, a completed form must be received by the facility head or facility designee prior to the veteran's death.

(b) Delivery of funds and effects. The delivery of the veteran's funds or effects to the designee is only a delivery of possession. Such delivery of possession does not affect in any manner:

(1) The title to such funds or effects; or

(2) The person legally entitled to ownership of such funds or effects.

(c) Veteran becomes incompetent. If a veteran is determined to be incompetent pursuant to an order of a state court or is determined to be unable to manage monetary VA benefits by a VA clinician after the veteran is admitted to a VA field facility, the VA field facility staff will contact the Veterans Benefits Administration for the application of 38 CFR 3.353, regarding an incompetency rating as to whether the veteran is able to manage monetary VA benefits, and, if appropriate, 38 CFR 13.55, regarding VA fiduciary appointments. If the Veterans Benefits Administration determines that a veteran is incompetent to manage monetary VA benefits, any designation by the veteran under paragraph (a) of this section will cease with respect to VA benefits that are deposited by VA into the Personal Funds of Patients. The veteran's designation will not change with respect to disposition of funds and personal effects derived from non-

VA sources, unless a court-appointed guardian or conservator changes or revokes the existing designation.

(d) Retention of funds and effects by a veteran. Upon admission to a VA field facility, VA will encourage a competent veteran to:

(1) Place articles of little or no use to the veteran during the period of care in the custody of a family member or friend; and

(2) Retain only such funds and effects that are actually required and necessary for the veteran's immediate convenience.

(The information collection is pending Office of Management and Budget approval.)

(Authority: 38 U.S.C. 8502)

#### § 12.2 [Amended]

4. In § 12.2 amend paragraph (a) by removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

#### § 12.3 [Amended]

5. In § 12.3 amend paragraph (a)(1) by removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits,” and by removing the word “gratuitous” and adding, in its place “VA”.

#### § 12.4 [Amended]

6. Amend § 12.4 by:

a. In paragraph (a) introductory text, removing the phrase “funds on deposit in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

b. In paragraph (d), removing the phrase “funds deposited by the Department of Veterans Affairs in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

#### § 12.5 [Amended]

7. Amend § 12.5 by:

a. In paragraph (c), removing the phrase “gratuitous benefits deposited by the Department of Veterans Affairs in Personal Funds of Patients under laws administered by the Department of Veterans Affairs” and adding, in its place, “funds deposited by VA in Personal Funds of Patients that were derived from VA benefits”.

b. In paragraph (d), removing the phrase “gratuitous benefits under laws administered by the Department of Veterans Affairs” and adding, in its place, “VA benefits”; and removing “funds derived from gratuitous” and adding, in its place, “funds derived from VA”.

[FR Doc. 2014-26953 Filed 11/13/2014 at 8:45 am; Publication Date: 11/14/2014]